

REMARKS

In the above-identified Office Action, the Examiner has objected to claims 5,7,13,17 and 19 for use of the term "selected from a group consisting of." Applicant has amended these claims so that they now are in conformance with the Examiner's requirements.

In addition, the Examiner has rejected claims 7,15,19 and 21 based on a written description requirement. The Examiner has stated that the specification does not clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed. Applicant disagrees with the Examiner's rejection herein noting that there are instructions in the specification, particularly on page 15, lines 33 and following, lines 23, lines 25 and following, in which there is an adequate written description of the invention which one skilled in the art would be able to follow and recognize the claimed invention. More specifically, a probe is specifically described and the method in the use of a probe and the invention is specifically step-by-step described. As such, applicant believes that one skilled in the art would certainly recognize and understand the invention. In addition, applicant has now deleted from the claims the objected to phrase "no more than five mismatches." As such, applicant believes that the written description requirement is fulfilled.

Claims 7, 15, 19 and 21 have been rejected as not being enabled for probes comprising no more than five mismatches. As stated above, applicant has deleted this language and accordingly, applicant believes that the claims 7, 15, 19 and 21 are now enabled.

In addition to the above, claims 1, 2, 4, 6, 20 and 22 have been rejected as anticipated by Hyldig-Nielsen, et al. Applicants believe that claim 1 is novel and non obvious over Hyldig-Nielsen, et al. Nielsen does not subject the sample to a lysisbuffer. Nielson is not concerned with selecting a particular hybridisation protocol based on the outcome of a Gram-staining. Moreover, the present invention subjects a sample comprising a Gram-negative coccus to a lysisbuffer comprising lysozyme. Prior to the method of the invention, no generally applicable permeabilization protocols had been established. The present invention allows the introduction of *in situ* hybridisation procedures according to the invention, in settings other than dedicated research laboratories. This aspect is not addressed nor suggested by Nielsen. The invention is also not obvious over the combination of Nielsen with either Hashimoto et al, or Leong et al.

Neither of these publications deals with *in situ* hybridisation which method requires precise and accurate preparation of the sample to achieve permeabilization of the bacterium without essentially destruction of the intracellular structures, a feature that is unique to the invention (see PCT-publication of the present invention, page 15, lines 1-9).

In addition, claims 1, 2, 4, 9, 11 and 20 have been rejected as anticipated by Hashimoto. Hashimoto does not deal with *in situ* hybridisation, which method requires precise and accurate preparation of the sample to achieve permeabilization of the bacterium without destruction of the intracellular structures, a feature unique to the subject invention.

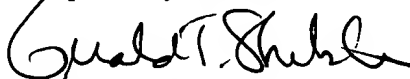
In addition, claims 3, 5, 7-19 and 21 have been rejected as unpatentable over Hyldig-Nielsen et al and further in view of Leong, et al. Leong suffers from the same deficiencies as Hashimoto, i.e., it does not deal with *in situ* hybridisation which, as stated above, requires a precise and accurate preparation of the sample to achieve permeabilization of the bacterium without the destruction of the intracellular structures. Hyldig-Nielsen does not supply this deficiency and accordingly, the combination of these two references does not provide the subject invention.

Claims 3, 5-8, 10, 12-19 and 21 have been rejected as unpatentable over Hashimoto and further in view of Leong, et al. As stated above, neither Hashimoto nor Leong deals with *in situ* hybridisation and accordingly, cannot make obvious the subject invention.

Applicant hereby requests reconsideration and re-examination thereof.

With the above amendments and the remarks, this application is considered ready for allowance, and Applicants earnestly solicit an early notice of same. If the Examiner believes that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to call the undersigned attorney at the telephone number listed below.

Respectfully submitted,



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